IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9955 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SACHHUMAL FONOMAL LACHHVANI @ SACHHUMAL

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR AS PATEL, AGP for Respondent No.1, 2 & 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/10/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 9-8-2000

passed by the District Magistrate, Ahmedabad in exercise of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. Heard learned advocate for the petitioner, Mr.V.H.Patel, learned AGP for the respondent Nos.1, 3 and 4, Mr.A.S.Patel and learned Addl. Central Govt. Standing Counsel for the respondent No.2, Ms.P.J.Davawala.

3. Mr.Patel has restricted his arguments only on the ground that detenu has sent a written representation to the State Government by registered A/D on 22-8-2000 demanding xerox copies of the original documents through jail authority and same has been received by the jail authority on 24-8-2000 and not forwarded the same which resulted in non-supply of those documents and no reply to the said representation has been given to the petitioner. He has produced the original acknowledgment slip which is ordered to be taken on record.

4. It appears that though copies of the documents were demanded by the petitioner vide representation dated 22-8-2000, same has not been supplied to the petitioner and even no reply has been given to him. The acknowledgment slip confirms the fact of receipt of representation. It is prima-facie established that though the representation has been received, the jail authority has not forwarded the same to the State Government and, therefore, the valuable rights of the petitioner are violated.

5. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari

passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copies of the documents, though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

6. In view of the above, the petition is allowed. The impugned order of detention dated 9-8-2000 passed against the detenu is hereby quashed and set aside. The detenu-Sachhumal Fonomal Lachhvani @ Sachhumal is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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